

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN CAMPBELL,

Defendant-Appellant.

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UNPUBLISHED

May 3, 2005

No. 249886

Wayne Circuit Court

LC No. 03-002133-01

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right his jury convictions of operating a vehicle under the influence of intoxicating liquor causing death, MCL 257.625(4), and operating a vehicle with license suspended causing death, MCL 257.904(4), on the ground that the unavailability of certain transcripts has resulted in material prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When defendant claimed an appeal to this Court, the court reporter filed an affidavit indicating that while he was in possession of his notes for the trial proceedings held on May 14, 2003, he could not locate his notes for the trial proceedings held on May 15 and 16, 2003. Defendant moved to settle the record or, in the alternative, for a new trial. The trial court ordered the parties to file proposed statements of fact in an attempt to settle the record. MCR 7.210(B)(2). The trial court, after examining the parties' statements, determined that this Court would be able to review the record in its entirety based on the available transcript and the parties' statements, and concluded that defendant was not entitled to a new trial.

The inability to obtain a transcript of a criminal proceeding may so impede a defendant's constitutional right to appeal that a new trial must be ordered. *People v Horton (After Remand)*, 105 Mich App 329, 331; 306 NW2d 500 (1981). The unavailability of a transcript does not automatically require the vacation of a defendant's conviction. We must determine whether the unavailability of those portions of the trial transcript so impedes the defendant's right to appeal that a new trial must be ordered. *People v Audison*, 126 Mich App 829, 834-835; 338 NW2d 235 (1983). The defendant bears the burden of demonstrating prejudice resulting from missing transcripts. *Bransford v Brown*, 806 F2d 83, 86 (CA 6, 1986). While demonstrating prejudice is difficult in the absence of transcripts, nevertheless, a defendant must present more than gross speculation that the transcripts were necessary to a fair appeal. *Id.*

We conclude that the trial court did not err by finding that the surviving record and the parties' statements of fact were sufficient to protect defendant's right to appeal. Defendant points to no facts that could support a finding that errors warranting reversal might have occurred during those proceedings for which transcripts are not available. The prosecutor's statement, prepared with the assistance of both the prosecutor who tried the case and defendant's trial counsel, gives no indication that such errors might have occurred. Defendant notes that during sentencing defense counsel objected to the scoring of the guidelines; however, his minimum terms were within the guidelines, and he does not indicate what the consequences to sentencing would have been had the trial court adopted his arguments regarding the guidelines. Defendant's bare assertion that the missing transcripts might reveal the existence of reversible error is too speculative to warrant a new trial. *Audison, supra*. Appellate relief is not warranted under the circumstances.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ David H. Sawyer  
/s/ Kurtis T. Wilder